IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO 1117 OF 2006

Mr.Amarlal Ramchand Gera
Since deceased through his
L/Rs;

1. Mr. Rajan Ramchand Gera and
Another ....Petitioners.

Vs.

Mr. Parbat Bhurabhai Patel
and Anr. .. Respondents.

CORAM : S.B. MHASE, J.
DATE : 18TH APRIL, 2006.

P.C.

. Heard.

2. Rule, returnable forthwith.

3. The order passed by the City Civil Court on 13/10/2005 in Chamber Summons No.1163/2005 in Long Cause Suit No. 3079 of 2005 dismissing the said chamber summons is under challenge. By the said Chamber summons the predecessors-in-title of the present petitioner viz. Amarlal Ramchand Gera prayed to join as a party defendant in L.C. Suit No. 3079/2005. The Long Cause Suit No. 3079 of 2005 has been filed by the respondent No.1 against respondent No.2 since the respondent No.2

has started an action under Section 351 of B.M.C. Act for removal of an unauthorised construction. The predecessor-in-title of the petitioner filed the above referred Chamber Summons claiming that the property which is in the hands of the original plaintiff/respondent No.1, is the property owned by the said predecessors-in-title and even though the society has been formed, there is no conveyance deed executed in respect of the said property in favour of the society and therefore the predecessors-in-title of the petitioner continued to be the owner of the said land. He claims that unauthorised construction has been carried out in his property and the action, which the B.M.C. has started is at the behest and in view of the complaint made by the predecessors-in-title of the petitioner. Therefore, the predecessors-in-title of the petitioner is a necessary party to the said proceeding.

4. The said Chamber Summons was decided by the City Civil Court on 13/10/2005 and it was rejected. Next date i.e. on 14/10/2005 the predecessors-in-title of the petitioner viz. Amarlal Ramchand Gera expired and the said property is inherited by the petitioners. It is claimed by the petitioners that the said property

devolved upon the petitioners since petitioner No.1 happens to be the brother and petitioner No.2 happens to be the wife of the deceased Amarlal Gera. In that capacity impugned order is challenged by the present petitioners.

5. No doubt, the order under challenge is dated 13/10/2005 and the petition has been filed on 17/2/2006. However, in para 10 of the petition delay has been explained stating therein that Amarlal Gera who had filed the said Chamber Summons has expired on 14/10/2005 and after his last rites were completed in December, 2005 the application was made for getting certified copies and certified copies were received on 3rd February, 2006 and thereafter immediately the petition has been filed and therefore, even though the learned Counsel for the respondent has tried to impress the Court that the petition suffers from delay and latches, from the facts of the present case this Court finds that the delay and latches has been properly explained and there is no substance in the contention of the respondent that the petition suffers from delay and latches on the part of the petitioners. Coming to the merits of the matter the City Civil Court has observed

that the applicant is the member of the said society and has rejected the said chamber summons. It is revealed from the affidavit filed along with the chamber summons by Rajan Ramchand Gera, who was constituted attorney for the applicant in chamber summons that the property which is in possession of the respondent/plaintiff was initially owned by the parents of the predecessors-in-title and they have constructed building on the said land comprising ground floor and upper six floors. It is further stated in the affidavit that the ground floor is having stilt garage and that the society was formed and was duly registered under Maharashtra Co-operative Societies Act but yet no conveyance has been executed in favour of the society in respect of the said property and that after the death of the parents of said Amarlal the property has devolved on the said applicant. It is equally stated in para 7 that the predecessors-in-title of the present petitioner is a member of the said society and he has every right to take part in the affairs of the Managing Committee and therefore, he is interested in the society. Ultimately, what is claimed is that that he should be joined party to the said suit. Out of this affidavit a stray observation appearing in para 7 was taken by the City

Civil Court that the predecessors-in-title of the petitioner are claiming as a member of the said society and the trial Court proceeded to scrutinise the chamber summons and ultimately rejected it. It is pertinent to note that if the said property is belonging to Amarlal Gera on the date of the suit and if the unauthorised construction has been carried out by the plaintiffs/respondents in the said property and if that was intimated and informed by said Amarlal to the Municipal Corporation and thereafter B.M.C. started action under section 351 of B.M.C. Act then it becomes clear that the action was at the behest of said Amarlal Gera and he was interested in removal of said unauthorised construction. No doubt said Amarlal could have filed separate suit for removal of unauthorised construction but he has put up machinery of B.M.C. into motion for the purpose of said action, which is equally permissible under the law. What I find is that, that so far as pending litigation is concerned, he is very much interested person to see whether unauthorised construction has been removed and the suit is dismissed. It is not the B.M.C. which is going to suffer but it is the person Amarlal or the present petitioners who are likely to suffer and therefore, petitioners are

necessary party to the suit as defendant.

6. Thus, this Court finds that the chamber summons is erroneously rejected and therefore, the order passed by the City Civil Court in Chamber Summons No. 1163 of 2005 is hereby quashed and set aside. Chamber Summons is hereby allowed. Plaintiff/respondent No.1 is hereby allowed to add present petitioners as heirs/legal representative of deceased Amarmal Gera as party defendant in the said suit. With this direction petition is disposed of.

[S.B. MHASE, J.]